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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RONALD J. ALVARADO, Plaintiff and Appellant, v. ROBERT F. FREEDMAN et al., Defendants and Respondents.	G055918 (Super. Ct. No. 30-2014-00736047) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Walter P. Schwarm, Judge. Affirmed.

Law Office of Foroozandeh and Majid Foroozandeh for Plaintiff and Appellant.

Parcells Law Firm and Dayton B. Parcells III for Defendants and Respondents.

Ronald J. Alvarado (Alvarado) loaned money to ContentX Technologies, LLC (ContentX), a company created to help businesses in the adult entertainment industry collect money from parties who illegally download content from the Internet. When ContentX failed to repay Alvarado's loan, he sued ContentX, Robert F. Freedman (Freedman), and RFF Family Partnership, LP (RFFFP). He alleged Freedman and RFFFP (collectively referred in the singular as Freedman) were the alter egos of ContentX. Following a 12-day bench trial, the trial court entered judgment for Freedman. Alvarado appealed the decision, and we affirmed the judgment after rejecting his arguments challenging the sufficiency of the evidence. (*Alvarado v. Freedman* (Dec. 5, 2018, G055307) [nonpub. opn.].)

While the appeal was pending, the trial court ordered Alvarado to pay Freedman $203,940 in attorney fees pursuant to Civil Code section 1717. (All further statutory references are to the Civil Code.) Alvarado challenges this order, raising the following issues on appeal: (1) Freedman was not entitled to recover contractual attorney fees because he was a nonsignatory to the applicable contract; (2) the court should have apportioned fees between the contract and tort causes of action; and (3) Freedman's counsel charged an unreasonable hourly rate. We conclude all of these contentions lack merit, and we affirm the order.

FACTS

We incorporate by reference our detailed summary of the underlying facts from our prior opinion. (*Alvarado, supra*, G055307.) We need only repeat the facts relevant to the three issues raised in this appeal, which are included in our discussion below.

DISCUSSION

I. *Entitlement to Attorney Fees*

Freedman's motion for attorney fees was based on section 1717. He alleged the breach of contract claim in Alvarado's fourth amended complaint sought

compensatory damages plus attorney fees. He explained it was Alvarado's theory that attorney fees were recoverable because Alvarado and ContentX's promissory note contained the following provision: "That should a dispute arise the prevailing party shall be entitled to recover its reasonable attorney[] fees and costs." Additionally, Freedman's attorney declared that during the trial's closing argument, Alvarado requested an attorney fee award against Freedman in accordance with this provision in the promissory note.

In his motion, Freedman argued there was no dispute he was the prevailing party and submitted a copy of the trial court's statement of decision ruling in his favor on all causes of action. He cited case authority holding that when a plaintiff sues for breach of a contract, which provides for the recovery of attorney fees, and the plaintiff alleges the defendant is the alter ego of a contracting party, the plaintiff must pay that defendant's attorney fees if he loses the case. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128-129 (*Reynolds*).) He asserted the purpose of section 1717 required that it be interpreted to provide "a reciprocal remedy for a nonsignatory defendant, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney's fees should he prevail in enforcing the contractual obligation against the defendant." (*Id.* at p. 128.) The court agreed and awarded Freedman $203,940 for attorney fees.

On appeal, Alvarado "recognizes the holding" in *Reynolds,* but argues the case is "[n]ot [e]xactly on [p]oint" because it contains some factual differences from his case. Alvarado asserts this case is different because in *Reynolds,* the prevailing defendants were shareholders and directors of a company that became insolvent and owed money to the plaintiff and they prevailed on three causes of action. Alvarado maintains his lawsuit claimed Freedman was the alter ego of ContentX under "the breach of contract action, not the promissory fraud cause of action." Alvarado does not explain what factual distinction he views is important or why it is relevant to the holding of the *Reynolds* case.

Instead, Alvarado offers the following argument: "[S]ee *Reynolds* . . . where the court held that a nonsignatory prevailing party *is not entitled* to attorney fees. [¶] 'We consider the better view to be that the statutory fees contemplated by . . . section 1717 may only be awarded to a [p]revailing party who is a [c]ontracting party, whether he is the party specified in the contract (as one who should receive the benefit) or not.'" (Italics added.) Alvarado's failure to properly include page references to support this argument is telling because the above quote is not from the *Reynolds* case. Moreover, Alvarado misstated the holding of *Reynolds.* Our Supreme Court determined a nonsignatoy *can claim* reciprocal attorney fees under section 1717, when he had been sued on the contract as if he were a party to it, i.e., under the alter ego theory. (*Reynolds, supra,* 25 Cal.3d at p. 128.)

Alvarado's reply brief cites to cases that do not further assist his argument. His case authority predates, and was disapproved of by the *Reynolds* case. (See *Jones v. Drain* (1983) 149 Cal.App.3d 484, 488 (*Jones*) [discussing development of law regarding nonsignatories recovering attorney fees under section 1717].) Accordingly, Alvarado's reliance on *Canal-Randolph Anaheim, Inc. v. Wilkoski* (1978) 78 Cal.App.3d 477, 485, *Boliver v. Surety Co.* (1977) 72 Cal.App.3d Supp. 22, 28-29, and *Arnold v. Browne* (1972) 27 Cal.App.3d 386, 398, to support his argument is misplaced. (See *Jones, supra,* 149 Cal.App.3d at pp. 488-489.)

Similarly, Alvarado's reliance on *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858 (*Blickman Turkus*), in the reply brief, is misdirected. He asserts this case holds there are only two situations that entitle a nonsignatory party to attorney fees, and because Freedman did not "*stand in the shoes of a party to the contract* and *was not a third-party beneficiary thereto,*" he was not entitled to fees. He has misread the case.

The court in *Blickman Turkus* held a nonsignatory was not entitled to fees under section 1717 because under the terms of the agreement, the plaintiff "would not

have been entitled to fees even if it had prevailed on its own complaint." (*Blickman Turkus, supra,* 162 Cal.App.4th at p. 896.) It discussed *Sessions Payroll Management, Inc. v. Noble Construction Co*. (2000) 84 Cal.App.4th 671, 677 [concerning third party beneficiaries]; and *Reynolds, supra,* 25 Cal.3d 124 at page 129 [concerning alter ego allegations] as representing two situations where nonsignatory defendants could recover attorney fees. (*Blickman Turkus, supra*, 162 Cal.App.4th at pp. 896-897.) Relevant to this case, the court in *Blickman Turkus* characterized the nonsignatory defendant in *Reynolds* as recovering fees because he was "sued on the ground that he *stands in the shoes of a party to the contract*, and where he would be liable for fees if that claim succeeded[.]" (*Blickman Turkus, supra,* 162 Cal.App.4th at p. 897, italics added.) The *Blickman Turkus* court explained the nonsignatory defendant "stands in the shoes" of the entity signing the contract because plaintiff alleged the two entities should be treated as one under the alter ego doctrine. (*Ibid.*)

This is exactly what Alvarado alleged in his complaint. Freedman was sued on the theory he stood in the shoes of ContentX, a party to the contract, and he would have been liable for attorney fees if Alvarado prevailed. In light of all the above, we find no reason to disturb the court's application of section 1717 to a nonsignatory defendant in this case.

II. *Apportionment Issue*

Alvarado's operative complaint alleged two causes of action, i.e., breach of contract and promissory fraud. He opposed the motion for attorney fees on several grounds, including the argument the fees must be apportioned because section 1717 does not apply to tort claims such as promissory fraud. Alvarado maintained Freedman's attorney "failed to breakdown which fees were related to the breach of contract action versus the promissory fraud cause of action." He suggested a "50/50" breakdown was reasonable and the amount of requested fees should be reduced by one half.

The trial court rejected this argument. In its minute order (tentative ruling), the court reviewed the applicable case law as follows: "'"Apportionment of a fee award between fees incurred on a contract cause of action and those incurred on other causes of action is within the trial court's discretion . . . ." [Citations.] . . . "However, '[a]ttorney[] fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed.'" [Citation.]' [Citation.] 'Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units.' [Citation.]"

Applying this case authority, the trial court ruled as follows: "The [c]ourt finds apportionment unnecessary because the first and second causes of action were inextricably intertwined. The first cause of action sought damages for breach of contract. [Citations.] . . . The second cause of action required [Alvarado] to demonstrate (and [Freedman] to defend against) damages arising from the breach of contract. Thus, there was a common issue[s] between the first and second causes of action. Additionally, the principal controverted issue between the parties was whether [Freedman was] the alter ego of ContentX. The issue of alter ego applied equally to both causes of action."

In his briefing on appeal, Alvarado asserts, "Here, the alter ego doctrine was solely relevant only to the breach of contract cause of action, and the promissory fraud stood on its own, alleging that [Freedman] fraudulently misled [Alvarado] into making the $75,000 loan." He maintains the court erred by finding the alter ego doctrine applied to the fraud cause of action. He boldly states, "It did not, and the pleadings bear this out as does the record. The issue of alter ego applied only to the breach of contract action." Alvarado adds the alter ego doctrine was not necessary to establish Freedman's liability for promissory fraud.

Noticeably missing from this argument are any citations to the record. The reason for this becomes clear after reading Freedman's respondent's brief. Freedman's

briefing includes record citations to Alvarado's pleadings and trial proceedings where Alvarado applied alter ego allegations to both causes of action. For example, the operative pleading incorporated the alter ego allegations into both causes of action. Similarly, Alvarado's closing argument, which discussed promissory fraud separately from the breach of contract claim, included alter ego allegations for both causes of action. Indeed, the last paragraph of Alvarado's promissory fraud argument states the following: "[ContentX] extended many carrots (all lies) before [Alvarado] finally agreed to make the loan. . . . The incentives were a far cry from the truth, but worked and Freedman got his AVN sponsorship without paying the price. [A]lvarado like attorney Weinberg's victims—left holding the bag. Judgment in favor of the plaintiff will *eliminate the inequity and injustice the alter ego doctrine* is designed to prevent." (Italics added.) The record shows Alvarado relied on the same evidence to prove both alter ego liability and to establish promissory fraud.

Thus, although alter ego liability was not a necessary element of promissory fraud, in this case, it was the primary basis for Alvarado's promissory fraud action. As noted in our prior opinion, and in Freedman's motion for attorney fees, Alvarado did not present any other evidence at trial suggesting Freedman directly made promises or misrepresentations to fraudulently persuade Alvarado to loan money to ContentX. They only spoke once before Alvarado loaned the money, and their conversation did not relate to business matters. Liability was premised on Freedman's purported dealings "behind the scenes," acting as ContentX's alter ego. This theory was included in Alvarado's closing argument, when he used the analogy that Freedman was hiding like an "[o]strich, claiming he knew nothing" about the loan or Alvarado, but taking the loan money "knowing he would never entertain paying him back."

Alvarado concedes in his opening brief, "The gravamen of the complaint was that Freedman personally hid behind" ContentX, and the company "lur[ed]" Alvarado into loaning money. The evidence needed to prove Freedman was hiding

behind the company, but was actually the one in control, was the same evidence used to prove the alleged alter ego liability. It cannot be said the court abused its discretion in concluding the issue of alter ego liability consumed most of the case, and therefore, apportionment was unnecessary because the two causes of action were inextricably intertwined. (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 687.)

III. *Reasonable Amount of Attorney Fees*

As part of the motion for attorney fees, Freedman's counsel, Dayton B. Parcells III, attached an exhibit containing a "history bill of invoices sent to and paid by Defendants for the attorney[] fees incurred in defending this lawsuit." Parcells explained the entries were made and recorded when the services were provided, broken down by date, type of service, time, and rates charged by himself, and his associates, Allan B. Claybon and Edward Cosgrove. In his supporting declaration, Parcells stated he had over 25 years of litigation experience, in addition to teaching at universities and working as an arbitrator/mediator. He explained he initially charged new clients $650 per hour, which was reflected in the billing statements. Parcells stated his current customary rate was $750 per hour. In addition, Parcells explained his two associates, Claybon and Cosgrove, respectively, had 10 years and 8 years of extensive civil litigation experience and their customary hourly rate was $350 per hour. Finally, Parcells stated that approximately one year ago a Los Angeles superior court trial judge determined all these billing rates were customary and reasonable.

In his opposition, Alvarado asserted a reasonable hourly rate in Orange County was $350 per hour. He supported this assertion by simply citing the portion of Parcells's declaration discussing Claybon's and Cosgrove's hourly rates. He then inexplicably raised on objection to this same portion of Parcells's declaration as lacking foundation. He also objected to Parcells's statement about what a different trial judge determined was a reasonable rate, arguing the evidence was inadmissible hearsay evidence. Finally, he complained the billing statement showed charges for services

provided by someone with the initials B.M., and there was no evidence B.M. had "any right to bill $350" per hour.

Although Alvarado did not include a copy of Freedman's reply brief in the record, Freedman submitted a copy of the document in his respondent's appendix. In response to Alvarado's argument Parcells was charging an unreasonable rate, Freedman asserted Alvarado failed to provide any testimony to refute Parcells's declaration $650 and $750 was the prevailing rate for similar work by attorneys with comparable experience.

The court determined it would reduce the requested attorney fee award by $875 because Parcells's declaration did not identify the source of invoice entries made by someone with the initials B.M. It noted, "The court does not find that the hourly rates used to calculate the total amount of attorney[] fees are unreasonable."

"We review attorney fee awards on an abuse of discretion standard. 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong."' [Citation.] 'Fees approved by the trial court are presumed to be reasonable, and the objectors must show error in the award.' [Citation.]" (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488.) In his briefing, Alvarado simply states a reasonable hourly rate is $350 not $650. He does not refer to any evidence or legal authority to support this theory. This self-serving statement simply does not satisfy his burden of proving the court abused its discretion.

Generally, a trial court deciding whether counsel's hourly rates are reasonable will look to the "'"hourly amount to which attorneys of like skill in the area would typically be entitled."' [Citations.]" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133.) "The fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line with those prevailing in

the community for similar services of lawyers of reasonably comparable skill and reputation." (*Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263.) Expert testimony is not required. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

Parcells's declaration provided sufficient evidence that the claimed rates were in line with those prevailing in the community. He submitted detailed records to permit the trial court to evaluate the time spent, the need for services, the skill employed, and the reasonableness of the rate in light of the complexity of the case. Parcells differentiated himself from his associates, explaining his expertise as a litigator for 25 years justified a higher billing rate than attorneys who had less experience (10 years practicing law). In light of this record, and Alvarado's failure to present contrary evidence, we find no reason to hold the court abused its discretion.

DISPOSITION

The postjudgment order is affirmed. Respondents shall recover their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.